although in fact permitting a recovery by him in his parental relation, was the rule of a legal fiction which no longer obtains under the reformed procedure, because of the abolition by the Code of fictions in pleading, and its requirement to state the actual facts in controversy."

NEGLIGENCE—DRUGGIST SELLING PROPRIETARY MEDICINE WITHOUT KNOWING CONTENTS—Plaintiff's daughter was suffering from a headache, and went to the store of defendant, a druggist, and asked for and obtained a "Kohler Headache Powder." Returning home, she took the powder, and died from its effects. The action was for the recovery of damages, the plaintiff's contention being that "the vender of drugs is bound to know what he is selling, to such an extent at least, as to insure that he is not selling the ignorant public a deadly poison disguised as a useful medicine." *Held*, that there could be no recovery. *West* v. *Emanuel*, (1901) 198 Pa. 180, 47 Atl. Rep. 965, 53 L. R. A. 329.

It appeared that Kohler's headache powders were a well known preparation, generally kept on sale by druggists, and recognized and regarded as an efficient and proper remedy for headaches. They were prepared by Kohler and sold by him to the druggists. "In the sales of patent or proprietary medicines furnished by the compounder of the ingredients which compose them," said the court, "the druggist is not required to analyze the contents of each bottle or package he receives. If he delivers to the consumer the article called for, with the label of the proprietary or patentee upon it, he cannot be justly charged with negligence in so doing."

The liability of the druggist who in person or by his clerk negligently sells a dangerous drug for a harmless one, is abundantly established by the authorities, [*Brown* v. *Marshall*, (1882) 47 Mich. 576, 41 Am. Rep. 728; *Thomas* v. *Winchester*, (1852) 6 N. Y. 397, 57 Am. Dec. 455; *Fleet* v. *Hollenkemp*, (1852) 13 B. Mon. 219, 56 Am. Dec. 563; *Wise* v. *Morgan*, (1898) 101 Tenn. 273, 48 S. W. Rep. 971, 44 L. R. A. 548; *McCubbin* v. *Hastings*, (1875) 27 La. Ann. 713; *Norton* v. *Sewall*, (1870) 106 Mass. 143, 8 Am. Rep. 298; *Smith* v. *Hays*, (1886) 23 Ill. App. 244; *Peters v. Johnson*,—W. Va.—, 41 S. E. Rep. 190;] even where the person injured is a remote but naturally to be expected user, (*Thomas* v. *Winchester*, *supra; Norton* v. *Sewall*, *supra; Wise* v. *Morgan*, *supra;*) but the present case is easily distinguishable. It is more nearly analogous to the case of the seller who furnishes, at the request of the purchaser, a known, described and defined article, in which case, as is well settled, (Mechem on Sales, §1349,) there is no implied warranty of fitness for intended use. It seems clear enough that druggists, in these days, could do business on no other rule. Where the druggist is himself the manufacturer of the article, and puts in harmful drugs, a different case is obviously presented. See *George* v. *Skivington*, *L. R. 5 Exch. 1.*

PHYSICIAN—DUTY TO RESPOND TO CALL—An interesting case, apparently of first impression, but determined upon well settled principles, came lately before the supreme court of Indiana. The defendant was a practicing physician, licensed under the laws of the state, and holding himself out to

the public as a general practitioner of medicine. He had been the family physician of one Charlotte M. Burk. She became dangerously ill, and sent for defendant. The messenger informed defendant of her dangerous illness, tendered him his fee, and stated, what was the fact, that no other physician was procurable. Without any excuse whatever, as was alleged, defendant refused to respond to the call, and death resulted. The action was by the administrator of Charlotte M. Burk, to recover $10,000 for causing her death. It was held that the action was not maintainable. The defendant, it was *said*, was under no common law duty to respond to every call, and the statute did not impose such a duty. "In obtaining the state's license (permission) to practice medicine," said the court, "the state does not require, and the licensee does not engage, that he will practice at all, or on other terms than he may choose to accept. Analogies drawn from the obligations to the public on the part of innkeepers, common carriers, and the like, are beside the mark." *Hurley* v. *Eddingfield* (1901)—Ind.—59 N. E. Rep. 1058, 53 L. R. A. 135. The court was doubtless right both in regard to the common law duty, and the effect of the statute, but it is also doubtless true that the statute might impose such a duty, and perhaps should do so.

WILLS—CONTRACT TO MAKE—FRAUD IN OBTAINING CHARITY—RELIEF IN EQUITY.—An old woman without apparent means of support obtained aid from an unincorporated charitable society, to the extent of several hundred dollars, upon representations of destitution. After furnishing her for several years, the society suspected that she had property, and induced her to make a will disposing of all her property to the society. The attorney for the society drew up the will and represented to her that he was informed that she had agreed to make such a will in consideration of what the society had done, were doing, and expected to do for her; to which she assented. Later she revoked this will, and executed one disposing of all her property in favor of relatives in Germany. She died leaving $3800, in savings bank deposits, all of which except the accruing interest she had at the time the first aid was obtained. The society filed a bill in equity, against the executor and legatees, alleging these facts, and praying that the agreement and will be decreed an irrevocable contract, "that the rights of your orators in any manner, in the estate of Minna Stager be enforced against said defendants and said estate," and the defendants be required to account. The defendants answered denying the contract and all rights of the complainants.

The court of chancery found the contract alleged by the complainants, and ordered all the property turned over to the complainants. *Anderson* v. *Eggers*, (N. J.) 47 Atl. Rep. 727. On appeal the court of errors held that the alleged contract had not been made out, but that the allegation of fraud was sustained, and that the prayer of the bill and the jurisdiction of the court warranted a decree in favor of the complainants for the value of the supplies obtained by the fraudulent representations of the deceased. Opinion by Dixon, J., Adams, J., dissenting. *Anderson* v. *Eggers* (New Jersey Court of Errors, June 17, 1901), 49 Atl. Rep. 578, 55 L.R.A. 570.

The following is from the opinion: "The claim that a legal obligation is assumed must be supported by something beyond the consent to make a will.